

APPROVED

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Tuesday, September 30, 2003 Rockville, Md.

The County Council for Montgomery County, Maryland convened in the Council Hearing Room, Stella B. Werner Council Office Building, Rockville, Maryland, at 9:18 A.M. on Tuesday, September 30, 2003.

PRESENT

Michael L. Subin, President
Phil Andrews
Howard Denis
Nancy Floreen

Steven A. Silverman, Vice President
Michael Knapp
George Leventhal
Thomas Perez

Marilyn J. Praisner

The President in the Chair.

The Council held a moment of silence.

SUBJECT: Councilmember Comments

Councilmember Floreen expressed concern over the recent fire and devastating destruction of the National Capital Trolley Museum. She said residents have many memories of their children riding the trolley cars, that this is a significant loss, and that she and her colleagues hope that the museum can be restored.

SUBJECT: Proclamation in Recognition of "Mentor Month"

The proclamation was presented by Councilmember Andrews to Mr. John Smith, President, Montgomery County Task Force on Mentoring. Also present were Richard Montgomery High School teacher Sally Rosner who initiated the program at the school, Special Education Instructional Assistant Tasha Kelly, and students involved in the program.

SUBJECT: Approval of Minutes

ACTION: Approved the minutes of September 11, 2003, as amended.

Councilmember Silverman made the motion.

SUBJECT: Receipt of Petitions

The Council received the following petition, identified by correspondence control number 005183, from the Montgomery County Bill of Rights Coalition urging the Council to adopt the civil liberties resolution.

SUBJECT: Consent Calendar

Speaking in reference to the supplemental appropriation to the FY 04 Operating Budget for the Federal FY 2003 State/Local Preparedness Equipment Grant, Councilmember Praisner said she received information from Executive Branch staff about the shelf life of equipment to be purchased, and that this raises the question of what the County will do after five years if State funds are not forthcoming. She expressed concern that Chief Administrative Officer Romer did not provide a comprehensive funding priority list because of limited staff resources, and questioned what resources or personnel are necessary to develop this list. Ms. Praisner expressed the view that the comprehensive priority list should be developed first so that it can be used in determining whether or not to take advantage of a grant opportunity.

President Subin concurred with Ms. Praisner's remarks, stating that the emergent response to hurricane Isabel was an example of the Emergency Management Group's outstanding response to an emergency situation, but what is lacking is the issue of prior planning. He said there was no pre-positioning of equipment, no pre-designation of shelters, no plans or contingencies. Mr. Subin acknowledged that there will be emergent grants, and the Council will need to be able to respond to them in context, which is why the priority list is of great importance. He noted that Councilmember Knapp will be addressing these issues in the Homeland Security Committee (HSC). Mr. Knapp commented that the Committee spent a great deal of time discussing this issue with the Assistant Chief Administrative Officer, is working toward a resolution, and will continue to follow up with Mr. Romer. Mr. Subin directed the Health and Human Services Committee, jointly with the HSC, to address the issue of generators at area hospitals, noting the generators' limited operating capacity of three to four days. He expressed concern that if a more lasting situation occurs, the limited capacity of the generators and the lack of spare parts to repair the equipment will have serious consequences.

ACTION: Adopted the consent calendar:

Introduced a resolution to amend the Ten-Year Comprehensive Solid Waste Management Plan;

Resolution 15-351, approving a supplemental appropriation to the FY 04 Operating Budget for Federal FY 2003 State/Local Preparedness Equipment Grant, in the amount of \$361,754;

Resolution 15-352, approving a supplemental appropriation to the FY 04 Operating Budget of the Montgomery County Public Schools' (MCPS), for the 21st Century Community Learning Center Programs, in the amount of \$600,000;

Resolution 15-353, approving Categorical Transfers for the FY 03 Operating Budget of the MCPS;

Resolution 15-354, approving the appointment of Robert C. Maddox as Council representative to the Nominating Committee for the Board of Trustees of Montgomery College;

Resolution 15-355, confirming the County Executive's appointment of Ryan Erenhouse to the East County Citizens Advisory Board.

Councilmember Praisner made the motion.

SUBJECT: Resolution to Support Protection of Civil Liberties

The Council had before it the memorandum from Councilmembers Leventhal, Perez, Floreen, and Silverman, dated September 17, 2003.

Councilmember Leventhal, sponsor of the resolution, thanked Councilmembers Floreen, Perez, and Silverman for joining him as cosponsors; Mr. Romer, CAO, who worked extensively to ensure that this resolution does not impede the County's ability to fight the war on terrorism, protect public safety, and enforce the law; and Ms. Henderson, Director, Montgomery County Public Libraries. He said he has met with proponents of the resolution, and that Councilmembers have received well over a thousand communications in support of the resolution, which he noted is a gesture, not a law, urging the U.S. Congress to review the USA PATRIOT Act and modify provisions of it that threaten individual liberties and civil rights, similar to resolutions passed in 176 communities around the country. Mr. Leventhal said he has heard from local government officials, including the Director of Libraries, expressing concern that the PATRIOT Act may force them to comply with Federal directives that place them in an ethical dilemma of having to choose between supporting the principles of community policing or professional standards for librarians, or complying with Federal law. Referring to legislation adopted by the House of Representatives amending the USA PATRIOT Act, he said the resolution before the Council today is very similar in that it asks Congress to reconsider portions of the Act. Noting that he has received many communications from residents of the Muslim faith who believe they have been unfairly targeted and suspect for actions for which they have no culpability, he said the resolution calls for all County departments, agencies, officials and employees to continue to respect all residents' freedoms of speech, religion, and assembly, and right to privacy, in keeping with Montgomery County's distinguished practice of protecting human rights.

Councilmember Floreen, noting that this resolution is an important and critical statement of support for fundamental civil liberties, stated that since last week, another eight communities across the nation have adopted a similar resolution, and that it reflects the views of millions of Americans across the country. She said that many County programs have been tailored to address a diverse community; that it is appropriate to reaffirm the County's commitment to civil liberties through the administration of County programs; and that she is especially proud of the community policing initiatives, and the accessibility of information and education to all residents through the library system. Quoting Thomas Payne, Ms. Floreen said that this resolution sends a powerful message that the County will preserve individual freedoms as the nation strives to protect itself from terrorist activity.

Recalling his work beginning in 1989 for the Department of Justice, Councilmember Perez said he was proud to work under the Attorney Generals for over ten years in the enforcement of the Bill of Rights. He said now, under the name of combating terrorism, the PATRIOT Act apparently is being used for purposes for which it was not intended, and communities have said enough is enough. He expressed concern that the country is creating a false dichotomy when in reality, the nation can protect itself from terrorism at the same time it protects civil liberties. Referring to the County's long tradition of community policing, Mr. Perez said it is based on developing relationships of trust with the community, which is an especially difficult challenge when there are immigrant communities who are inherently fearful of authority. Noting that District of Columbia Police Chief Ramsey stated that the police will not inquire into the immigration status of people with whom they come into contact on the street, Mr. Perez said this resolution reiterates the message that the immigrant population need not worry about local law enforcement becoming the immigration police. Stating that it sends an important message that everyone in the community is valued, and that the police are not going to be asking irrelevant questions and will be doing their job fighting crime and protecting residents of the County, Councilmember Perez said he is proud to be a cosponsor of the resolution.

Councilmember Andrews, in expressing his opposition to the resolution, stated that three years ago he wrote the first local law in the nation prohibiting genetic discrimination in employment, which both the Council and the State of Maryland enacted. He said he understands the importance of protecting privacy and civil rights, but that this resolution does not change County policy on privacy or civil liberties, and the only effect the resolution has is to put the Council on record in favor of changing the USA PATRIOT Act generally, and very specifically with regard to the Act's applicability to libraries and bookstores. Acknowledging the good intention of the resolution's sponsors and advocates, he expressed the view that the resolution should be rejected for three reasons: (1) the PATRIOT Act is a very complex law, and the Council, in the limited time it has to consider the Act, cannot make an informed decision as to how the PATRIOT Act should be revised, and that the Council does not have access to some intelligence information that may have been the basis for some of the decisions made in the Act; (2) the resolution contains language that is so vague as to be indecipherable to most people, such as the phrase that calls for the integrity of community policing programs to be protected; and (3) the resolution contains some language that is extremely specific, and broad, noting that the resolution says that libraries and bookstores should be exempt from the provisions of the PATRIOT Act, the word "exempt" is not qualified, and he is concerned about having a blanket exemption because of news reports that some of the 9/11 hijackers used computers in public libraries to communicate with each other. Mr. Andrews expressed the view that this is not the appropriate resolution for this Council to send, and that there is insufficient information available for the Council to comment intelligently on this issue. Councilmember Andrews said he will dissent on the resolution and urged his colleagues to do the same.

Councilmember Denis, citing events throughout history, said it is an age old question whether a nation dedicated to freedom can survive during times of crisis or war, and that it has been debated whether actions taken in the name of protecting the nation were justified. Mr. Denis said that the issue is being able to achieve an appropriate balance, that most legislation needs improvement over time, and that several sections of the PATRIOT Act may need reconsideration. Referring to the concept of community policing, he said local police survive from information provided by residents, and that the confidence of the community must be maintained. In expressing support for the resolution, Councilmember Denis said that while there

is some justification for the arguments raised by Mr. Andrews, the resolution is a nonbinding statement that does not affect County law, but reflects the Council's view on the general issue of civil liberties.

Councilmember Subin said the issue of civil rights and civil liberties is something that directly effects how the County implements its laws and how the people of this community live on a day-to-day basis, and that he believes this issue is properly before the Council. He said many things changed on September 11, 2001, but that the fundamental sense of fairness and justice in this country should not have changed. Referring to some sections of the PATRIOT Act, Mr. Subin expressed the view that the Doctrine of "Inevitable Discovery" already grants law enforcement authorities a lot of flexibility in terms of not abiding by the dictates of the fourth amendment, and that it is not right. Expressing support for the resolution, Mr. Subin referred to the internment camps established during World War II, noting that this was one of the greatest blights on this country and that the Council and the country should not do anything that leads down the "slippery slope" toward the actual or de facto spirit of what existed then, and that the PATRIOT Act allows that to happen.

ACTION: Adopted Resolution 15-356, expressing support for the protection of civil liberties.

Councilmember Andrews was opposed.

SUBJECT: Resolution Regarding Spending Affordability Guidelines (SAG) for the FY 05 Capital Budget

The Council had before it the memorandum and attachments from Deputy Council Staff Director Orlin, dated September 26, 2003.

Councilmember Praisner, Chair of the Management and Fiscal Policy (MFP) Committee, presented the Committee's report and recommendation. She explained that the Council's actions today do not increase the County's bond capacity, which is a reflection of a variety of measures and will not be known until the spring. She stated that today, a number is set for the SAG which sends a message and provides flexibility for action the Council will take in the spring, and noted that there is a cost and expenditure implication for everything the Council does. Ms. Praisner said there is a limit beyond which the Council cannot go because it cannot be sustained, and cautioned the Council on the multiple messages that are sent about what the Council would like to do, what it can do, and what it may have to do, and that there are many variables still outstanding at this point in time. She expressed the view that the County Executive recommended a reasonable number for the beginning of the bond capacity process.

Councilmember Silverman made a substitute motion, duly seconded, to adopt the following guidelines: \$190 million for FY 05 and FY 06, respectively, and a total of \$1.14 billion in FY 05-10. He expressed the view that this increase will not make a significant difference, and that everyone realizes that the County must significantly increase its capital budget expenditure beginning next year and continuing for the next several years. Noting that the resolution only sets guidelines by indicating to the public the direction the Council wants to go in the spring, Mr. Silverman, stated that the Council has been accused of "nibbling around the edges and working at the margins." He said it is important to recognize that the capital budget will probably approach \$2 billion over six years, and that the "margins" will equal approximately

\$30 million over six years which can pay for a middle school modernization, two new elementary schools, the addition of gymnasiums in all elementary school that lack those, three recreation centers, or would make a significant contribution toward the County's transportation system. He said the difference between his motion and recommendations of the MFP Committee and the County Executive is real money, and that the Council should send a signal that it is ready to invest in the community. He said he is basing his motion on the debt capacity analysis generated by Executive Branch and Council Staff, which shows virtually no difference each year in the debt service ratio guideline.

Councilmember Leventhal thanked Mr. Silverman for his motion, and the MFP Committee and its Chair for their leadership on fiscal matters. He expressed confidence that should the Council adopt Mr. Silverman's recommendation, it will not endanger the County's bond rating and will not put the County at risk over the long term. As the Council adopts the capital budget, Mr. Leventhal said the Council has several tools available to raise the funds necessary to meet the needs of the growing community including more classrooms, transportation improvements, and economic revitalization of some areas. He indicated that later today, he will vote in support of using recordation tax revenue for school Capital Improvement Program (CIP) items, and for the residential sprinkler bill, even though it will add to the cost of a new home in the County. Although he anticipates that the impact fees will be adopted by the Council, Mr. Leventhal said he continues to have reservations about the barrier the impact fees represent to young families that want to live in Montgomery County. Referring to the increased borrowing capacity proposed by Councilmember Silverman, Mr. Leventhal expressed the view that residents will be grateful in the future for the new and modernized schools, improved roads, and revitalized communities that can proceed because of the increased availability of revenue.

Councilmember Knapp requested and received information from Mr. Orlin that in the past, the Council has generally reached the maximum spending limit set; that the Council receives the County Executive's recommended CIP on January 15; that in February, the Council has the opportunity to revise the CIP; and that the FY 05 and FY 06 guidelines may be increased by as much as ten percent of the limit the Council establishes today. In expressing support for Councilmember Silverman's substitute motion, Mr. Knapp said that although he has significant concerns, the Council needs to maintain flexibility at this point in the process, that clear priorities must be identified, and that it is probably in the County's best interest not to reach the \$190 million General Obligation bond level.

Councilmember Perez requested and received information that the ratio of debt service and lease payments to General Fund expenditures has exceeded ten percent in some prior years. Councilmember Subin pointed out that at one point the ratio reached eleven percent because the operating budgets did not increase as much as was projected and commitments had already been made. Mr. Perez expressed concern that raising the bond rates too high may create pressure to reduce the proposed impact tax rates, which he believes should not occur because the impact tax rates are necessary.

In expressing support for Councilmember Silverman's motion, Councilmember Floreen said she ran for Council office because she was particularly frustrated with the County's investment in transportation infrastructure. She said that previous CIPs contained a disproportionate percentage of funds not allocated for transportation. Ms. Floreen expressed the view that there is nothing in the data that shows that the \$190 million level is not

sustainable, and that for the County to address all its transportation and educational infrastructure needs, the Council needs to be aggressive and assess all the factors this winter in order to make a responsible decision.

Councilmember Subin, indicating his preference to adopt the MFP Committee's recommendation, said that the Budget Savings Committee is meeting next week to address budget concerns. He noted that late income tax filings are significantly lower than expected and will decrease the County's reserve, as will cleanup costs from Hurricane Isabel. Mr. Subin agreed that the County has many needs, but that this process is about determining the affordability of funding for needed improvements. Mr. Subin, noting that the Council may exceed its established guideline by ten percent, said he is not opposed to \$190 million, but that \$209 million is not sustainable.

Councilmember Praisner reported the Committee's unanimous recommendation to set Park and Planning debt guidelines of \$3.1 million for FY05, \$3.1 million for FY06, and \$18.6 million for FY 2005-2010.

ACTION: Approved the substitute motion to adopt General Obligation bond guidelines of \$190 million for FY05, \$190 million for FY06, and \$1,140 million for FY 2005-1010.

Councilmember Silverman made the motion.

Councilmembers Andrews, Praisner, and Subin were opposed.

Approved the SAG guidelines as amended.

Councilmember Praisner was opposed.

SUBJECT: Legislative Session
See the legislative journal of this date for the minutes of the legislative session.

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS A DISTRICT COUNCIL FOR THAT PORTION
OF THE MARYLAND-WASHINGTON REGIONAL DISTRICT
WITHIN MONTGOMERY COUNTY**

SUBJECT: Zoning Text Amendment 03-20, Permitted Uses - TS-R Zone

The Council had before it the memorandum and attachments from Senior Legislative Analyst Wilson, dated September 23, 2003.

Councilmember Silverman, Chair, Planning Housing, and Economic Development (PHED) Committee, presented the Committee's report.

ACTION: Approved ZTA 03-20, as amended, enacting Ordinance 15-15.

The PHED Committee made the motion and the Ordinance was enacted by a roll call vote:

YEAS: Floreen, Perez, Leventhal, Knapp, Andrews, Praisner, Silverman, Subin.

ABSENT: Denis (temporarily).

SUBJECT: Zoning Text Amendment 03-22, Country Inn Zone

The Council had before it the memorandum and attachments from Senior Legislative Analyst Wilson, dated September 23, 2003.

Councilmember Silverman presented the PHED Committee's report.

ACTION: Approved ZTA 03-22, as amended, enacting Ordinance 15-16.

The PHED Committee made the motion and the Ordinance was enacted by a roll call vote:

YEAS: Floreen, Perez, Leventhal, Knapp, Andrews, Praisner, Silverman, Subin.

ABSENT: Denis (temporarily).

SUBJECT: Local Map Amendment (LMA) G-804

The Council had before it LMA G-804, filed on November 8, 2002 by Applicant Old Hundred Road LLC, requesting the reclassification from the R-200 Zone to the Country Inn Zone of 5.26 acres of land identified as Parcel P347 on Maryland Tax Map DW22 and located at 23900 Old Hundred Road in Dickerson, in the northwest quadrant of the intersection of Old Hundred Road and Comus Road in the 11th Election District.

Hearing Examiner Carrier stated that, as noted in the resolution granting the reclassification, the approval of ZTA 03-22 resolves the issue that she raised in her report.

ACTION: Adopted Resolution 15-358, granting LMA G-804.

Councilmember Praisner made the motion and the resolution was adopted by a roll call vote:

YEAS: Floreen, Perez, Leventhal, Knapp, Andrews, Praisner, Silverman, Subin.

ABSENT: Denis (temporarily).

Councilmember Denis was temporarily absent for the vote on ZTA 03-20, ZTA 03-22, and LMA G-804, but later in the day, he stated that had he been present for the vote, he would have voted in the affirmative on the ZTAs and the LMA.

The Vice President in the Chair.

SUBJECT: Worksession on an Amendment to the Master Plan of Highways and Other Related Plans to Add High-Occupancy-Vehicle (HOV) Lanes on the Capital Beltway (I-495) Between the I-270 West Spur and Virginia and to Construct a Grade-Separated Interchange at the Intersection of Veirs Mill Road (MD 586) and Randolph Road

The Committee had before it the memorandum and attachments from Deputy Council Staff Director Orlin, dated September 26, 2003. The Committee received a handout at the meeting from the Montgomery County Planning Board (MCPB) containing additional information concerning the subject amendment.

Councilmember Floreen, Chair, Transportation and Environment Committee, presented the Committee's report.

Mr. Hekimian, Planning Staff, MCPB, briefed the Council on the proposal to add to master plans the HOV lanes on the Capital Beltway between the American Legion Bridge and I-270 West Spur; and the Interchange at Randolph Road/Veirs Mill Road, in accordance with briefing information provided.

Councilmember Praisner referred to her memorandum on the Randolph Road/Veirs Mill Road project, dated September 16, 2003, included in the Council's packet on pages ©19 and 20. She also referred to a map on page ©9 of the Council's packet depicting the interchange, and noted that the extent of the impact on the community cannot be fully understood by looking at the innocuous circle on the map. Ms. Praisner said that as her memorandum indicates, there was community participation and engagement in the process when it was discussed during review of the Glenmont Master Plan. At that time, the community agreed that a grade separation was probably needed at that interchange, but when the interchange was being designed, the community became concerned regarding the magnitude of a grade-separated interchange and its impact on homes, businesses, and pedestrians both near and well beyond the interchange. Councilmember Praisner recalled comments made by Councilmember Floreen regarding the impact a grade-separated interchange can have on pedestrians because a grade-separated interchange not only involves through lanes but on and off ramps as well. Ms. Praisner said that although a grade-separated interchange may allow buses and traffic to move through the intersection more efficiently, it creates an impact on the neighborhood and makes it more difficult for people to walk across those intersections. She noted the similarities between mixed commercial/residential development in the Randolph Road/Veirs Mill Road area and the Glenmont area at Randolph Road/Georgia Avenue, the location of another proposed grade-separated interchange; pointed out that the topography also has to be considered in the design of the interchange; and expressed concern about the number of grade-separated interchanges on Randolph Road and the implications of this on residents who live along this road.

Councilmember Praisner discussed the need for community involvement in the project, noting that because this was not a full master plan process, residents in the community who are not involved in neighborhood issues may not be fully informed concerning the project. She recalled that no one spoke or presented testimony at the public hearing on the amendment, and she is concerned that the community was not notified in person or by letter concerning plans to move forward on the project.

With respect to the Committee's recommendation to delete "for further study" from the text of the amendment, Councilmember Praisner suggested that it would be more appropriate to leave the words in the text since the planning process might indicate that the project will not proceed. She said that she might be more comfortable with the statement if it were restated more clearly. Ms. Praisner said that she believes there has not been a full appreciation of the impact created by grade-separated interchanges because the grade-separated interchange at Route 29/Randolph Road is the only one that is currently under construction; and noted the dissimilarities between the grade-separated interchange at Route 29/Randolph Road and the one proposed for Randolph Road/Veirs Mill Road. She reiterated her concern about the Randolph Road/Veirs Mill Road project, and suggested that the text of the amendment indicate in the Master Plan that the intersection of Randolph Road/Veirs Mill Road will be examined as part of the process rather than indicate that a grade-separated interchange will be built. Ms. Praisner suggested the need to reexamine the need for the grade-separated interchanges on Randolph Road, noting that residents in the Glenmont area said that the design for the interchange at Randolph Road/Georgia Avenue that was finally settled on is very good at moving people through the intersection but that it does not help area residents cross the street.

Councilmember Silverman discussed with Planning Staff the outreach effort made by MCPB with respect to the Randolph Road/Veirs Mill Road interchange. Mr. Silverman expressed concern regarding the notification method used by MCPB through neighborhood organizations. He said that because this project involves a specific area, the residents of the area will be interested in it, and he believes that the notification process should have been broader and should have included property owners as well as small business owners.

Mr. Silverman requested and received information from Mr. Orlin on the need to extend the deadline for action on the Final Draft Master Plan Amendment. Mr. Silverman that he does not want to vote on the interchange until interested citizens have been provided an opportunity to comment.

The President in the Chair.

Councilmember Leventhal said that he would support delaying Council action on the Amendment in order to solicit greater input from people that are directly affected. He expressed the view that grade-separated interchanges are helpful in congested areas; and discussed the inclusion of a bikeway as part of the design of the interchange. With respect to the proposal to add HOV lanes on the Capital Beltway between the I-270 West Spur and Virginia, Councilmember Leventhal said that despite the benefits involved, he believes it will not be easy to extend the HOV lanes east of the I-270 spur and that it would increase the existing "bottleneck" at the intersection of I-270 and the Beltway. He said that he voted for both recommendations in Committee and is prepared to vote for them again, but he has concern about

allowing more traffic in the western segment of the Beltway and providing no traffic relief on the eastern segment. He said that he understands that the narrowness of the right-of-way and concern about the taking of homes makes it difficult to provide traffic relief, and he has heard from residents who live east of the I-270 spur who are opposed to any widening east of the I-270 spur.

Councilmember Floreen proposed that the Council defer action on the Amendment and work with Council and MCPB Staff to devise a more appropriate and detailed outreach process to make certain that affected property owners near the Veirs Mill/Randolph Road intersection are accorded clear notification and an opportunity to offer their input on the MCPB recommendation. Ms. Floreen said that she shares Ms. Praisner's concern about the impact of the project on communities in the vicinity of the Veirs Mill Road/Randolph Road intersection. She suggested the possibility of revisiting the project if the Intercounty Connector (ICC) project proceeds. She said that because of inaction on the ICC, Randolph Road has had to become the ICC of the County, and this is the reason why communities are being devastated with widening and major thoroughfare solutions. She expressed the hope that time and other transportation solutions will solve these problems, and in the meantime, she believes it is important for master plans to identify projects that the Council wants to move forward on unless there are extenuating circumstances that have to be considered. She said that there are many items that have been removed from the Master Plan of Highways and that is always a possibility. However, she believes the Council should address significant bottleneck areas when possible.

Councilmember Perez stated that the Committee had this conversation as well and his concerns are expressed in the Council's packet. He noted his appreciation for the institutional memory that Councilmembers brought to this discussion.

Councilmember Subin said that the issue will be deferred until Councilmember Floreen believes that it is ready for Council action.

Councilmember Subin emphasized the Council's policy with respect to community outreach, and the importance of making certain that items are ready for the Council's consideration to avoid having to bring the items back and increasing the Council's workload. Mr. Subin requested that Council Staff draft a letter to Mr. Berlage, Chair of the Park and Planning Commission, for the joint signature of the Chair of the PHED Committee and the President of the Council concerning the need to provide citizens with appropriate notification on all matters except in the case of an emergency.

SUBJECT: Closed Session

ACTION: Agreed to meet in closed session to discuss an issue related to the Housing Opportunities Commission.

The Council convened in the Council Conference Room in closed session from 12:00 Noon until 12:45 P.M. under authority of Section 10-508(a)(3), State Government Article, Annotated Code of Maryland.

The Council recessed at 12:45 P.M. and reconvened at 1:39 P.M.

SUBJECT: Public Hearing on Bill 32-03, Retirement – FOP Labor Agreement

ACTION: The public hearing was conducted. Additional material for the Council's consideration should be submitted by the close of business October 7, 2003.

SUBJECT: Public Hearing on Expedited Bill 33-03, Retirement – Amendments

ACTION: The public hearing was conducted. Additional material for the Council's consideration should be submitted by the close of business October 7, 2003.

Vice President Silverman in the Chair.

SUBJECT: Bi-Annual Report of the Planning Board

The Council received a PowerPoint presentation from Mr. Berlage, Chair, Montgomery County Planning Board, on the Bi-Annual Report of the Planning Board, in accordance with the memorandum and attachments from Senior Legislative Analyst Michaelson, dated September 26, 2003. Mr. Berlage spoke about the role of the Board, commented on the difficult challenges ahead, and highlighted the areas that have been negatively impacted by budget reductions.

Councilmember Leventhal expressed appreciation to Mr. Berlage and Park and Planning Staff for the service they provide to the community. Referring to the purple line light rail proposed between Bethesda and Silver Spring, he said that it is well defined in the master plan and includes the alignment, station locations, mode, the hiker-biker trail, the bridge over Connecticut Avenue, the tunnel under the CSX railroad, and other important characteristics. He said that although the Montgomery and Prince George's County Councils are on record in support of a light rail connection, not just from Bethesda to Silver Spring but east to New Carrollton, there is no master plan detail for the Purple Line east of the Silver Spring Central Business District (CBD) to Langley Park nor has any alignment been identified in Prince George's County. Mr. Leventhal stated that the general concept of the Purple Line east of Silver Spring is supported in the East Silver Spring, the Takoma Park, and the Silver Spring CBD Master Plans which were all updated in 2000. Mr. Leventhal said that there has been an ongoing dialogue with the State regarding the bicounty transitway study and although the State is evaluating a variety of options with no clarity about its intent, the Montgomery and Prince George's County Councils have expressed clarity about what should occur. He proposed that there is a need to specify the alignment, station locations, mode (presumably light rail), and other important characteristics of the Purple Line east of Silver Spring in order to provide adequate public notice and to reserve the right-of-way for the line. He suggested that the Planning Board prepare master plan amendments as needed and that the Prince George's County Council prepare master plan amendments that clarify that it is the intent of the two Councils to proceed in this area. He also suggested that the Montgomery and Prince George's Planning Boards coordinate their efforts with the Maryland Transit Administration as it continues to study a variety of options. Mr. Leventhal suggested that the Council explore with its colleagues in Prince George's

County and that Mr. Berlage explore with his colleagues on the Prince George's County side of the Maryland-National Capital Park and

Planning Commission a joint master planning effort for the Purple Line. He requested Mr. Berlage to prepare a scope of work and timeline identifying what effect the request would have on other items in the work program and present the report to the Planning, Housing, and Economic Development (PHED) Committee as soon as possible.

With respect to Councilmember Leventhal's request, Mr. Berlage said that the request can be accommodated but that it will have a significant impact on the work program. Mr. Berlage said that some items would have to be deferred and extra funds would be required to hire outside consultants for some portions of the request. He stated that the Planning Board Staff have been drawing up preliminary data which will be available in a few days, and that the master plan for light rail between Bethesda and Silver Spring is ten years old but it is still relevant.

Councilmember Silverman stated that the Council supports Councilmember Leventhal's request for the Park and Planning Staff to provide information on the scope and timeline of his proposal.

In response to Councilmember Perez's question related to the most recent review of each master plan, Ms. Michaelson referred him to page ©45 of the packet which lists both the adopted master plans and the dates. With respect to the "Carry-in/Carry-out" pilot program which was established in the summer of 2002 that would have park users carry out any trash they generated while visiting selected County parks, Mr. Perez said that, except for the correspondence his Office received regarding PEPCO and Hurricane Isabel, the Carry-in/Carry-out program has created more correspondence than any other subject. He said that his constituents are concerned about the noticeable increase in the amount of litter along Sligo Creek. It appears to Mr. Perez that the new program simply isn't working in certain urban parks such as Sligo Creek; and that we should not wait two years before coming to this conclusion. In response to his question regarding the timeline for evaluating the pilot program, Ms. Michaelson provided a history of the issue and stated that when the Council considered this item last spring one of the key elements was to develop an evaluation plan. She said that she agrees it would be beneficial to develop a plan so that Councilmembers can inform their constituents about how the plan will be evaluated.

Mr. Loehr, Director, Department of Park and Planning, said that Ms. Orlansky, Director, Office of Legislative Oversight, has agreed to assist with the development of an evaluation plan. He said that by December 2004 the program will be evaluated and preliminary recommendations will be made.

Mr. Berlage spoke about the problems associated with the program and noted that in other jurisdictions, it took one to two years before users became completely accustomed to the new system.

Councilmember Perez expressed concern that he had already informed his constituents that there would be an evaluation of the program after one year. Mr. Silverman said that he was also under the assumption that a determination would be made after one year as to whether the program was a success. In response to the concerns of Councilmembers, Ms. Michaelson said that the Council did discuss how the citizens' complaint

would be worse in first six months after implementation and that it would take between one to two years before there would be a positive turn around.

Councilmember Praisner stated that the Committee and Council agreed that it would be more beneficial to perform an evaluation after all of the parks are participating in the program.

Councilmember Floreen stated that the Committee reviewed data from other communities that implemented the program which revealed that there were problems at the beginning. She said that constituents have been informed that this is a learning experience and given the number of residents that use the parks, there are not as many complaints as expected. Ms. Floreen said that the Committee will review the pilot program in December or January and will address the program comprehensively in December 2004. She stated that results at this point are consistent with what the Committee reviewed when it recommended the Council take this approach.

Councilmember Silverman stated that at the end of the year, the PHED Committee will review with Park and Planning Staff their preliminary conclusions regarding the program. He suggested that Park and Planning Staff work with Ms. Michaelson to develop a mechanism for public input and that Staff explore whether there are any organizations that would be interested in adopting parks and being responsible for trash pick up. He noted that the Town of Chevy Chase is taking over the responsibility for trash pick up in Elm Street Park.

With respect to Councilmember Silverman's suggestion, Councilmember Praisner said that she agrees it would be beneficial to determine whether there are any organizations interested in adopting parks which would be similar to the "Adopt a Road" program. She spoke about the importance of establishing consistent rules in each park and commented on how to implement a successful program.

Councilmember Perez said that perhaps a part of the discontent is that there was insufficient notice to the public. Mr. Berlage agreed, and stated that advance notice is currently being provided prior to implementation of the countywide program in December.

Ms. Michaelson suggested that a short-term solution to the problem would be to have the maintenance crews pick up litter more frequently along Sligo Creek, noting that there are other areas that may not require the same amount of maintenance.

Councilmember Leventhal said that he hopes there will be some information available on the pilot program at the end of this calendar year so that the issue can be discussed. With respect to Ms. Michaelson's suggestion to have maintenance crews pick up the litter more frequently, he questioned the rationale for believing that it would be less expensive to proceed in that manner and suggested that if it is implemented, the results be included in the initial evaluation of the pilot program. Mr. Leventhal spoke about the negative comments that he is receiving from the community and expressed concern that the program is a highly visible example of what the County is taking away from its citizens. He said that during the budget discussions, the Council tried to reassure the public that their taxes were being increased to maintain a high level of service and now they see a deteriorating level of service.

Councilmember Praisner stated that every year the Council adopts a budget with many components that are not visible to the public until later in the year once the program is implemented.

Councilmember Denis expressed the view that the Council should scrutinize the budgets more carefully in the future to fully understand the implications of any reductions. He said that the Council approved the program when it was a budget issue and he is concerned because the program appears to have problems and the public and some Councilmembers do not support it. Mr. Denis suggested that at the first opportunity when sufficient resources are available, the original program should be restored.

Vice President Silverman requested Ms. Michaelson to make available the material the Committee reviewed during its budget discussions regarding the implementation of the program in other jurisdictions. Referring to the fact that trash bags will be eliminated when the full program is implemented in December 2004 and the conclusion of Park and Planning Staff that providing dispensers with trash bags at Carry-In, Carry-Out parks will be eliminated because it is contrary to the goals of the program and many park patrons leave the bags at the park, Mr. Silverman requested that the bags be eliminated as soon as possible. Councilmember Silverman stated that the PHED Committee will be discussing the pilot program and the possibility of organizations adopting local parks in December 2003, and that it is the intent of the Council that there will be an evaluation of the pilot program in December 2004.

In response to Councilmember Perez's request that Park and Planning Staff provide information on the location of affordable housing in the County, Mr. Berlage said that Staff is currently pursuing that issue and it will be completed in January of 2004.

Councilmember Silverman requested that Staff make available information on the location of the Moderately Priced Dwelling Units for the Upper Rock Creek Master Plan discussion.

In response to Councilmember Perez's question regarding Park and Planning's mapping capacity and the fact that PEPCO cannot determine who has power at any one specific time, Commissioner Robinson said that it costs approximately ten times as much to install underground cable as it does to install above ground cable, that the system in the lower part of the County was developed incrementally and is deteriorating, and that it is particularly vulnerable to outages. Mr. Robinson said that it would be an expensive undertaking but he believes, at a minimum, the utility companies should place the cable underground along major transportation corridors in the County. In response to concerns, Mr. Loehr said that he believes PEPCO has access to the same Geographic Information Systems data as the Park and Planning Department.

Councilmember Floreen expressed appreciation to the Planning Board and Staff for their outstanding work. With respect to the responsibilities of PEPCO, she requested Park and Planning Staff to contribute to the discussion when the Transportation and Environment Committee meets to review tree maintenance issues. She said that during the budget discussions, the Council did not provide the amount of funding for tree maintenance that the Department of Public works and Transportation requested. With respect to the "green building" issue identified in the Report, she said that is another issue the Committee will be addressing in November. In response to her concern about the savings plan and how the Department expects to meet those objectives, Mr. Loehr said that the Department will consider freezing positions. Ms. Floreen

requested that the PHED Committee be kept informed about the effects of the savings plan on the Department. With respect to her question about using development review fees in an enterprise type of fund, Mr. Loehr said that Council had instructed the Park and Planning to increase the development review fees to cover 100 percent of the costs which was the goal in setting fees for this year. Ms. Floreen suggested that the issue of whether there can be a special revenue fund, similar to an enterprise fund, which takes the funding outside the spending affordability range into a different category, be explored. In response to Ms. Floreen's questions related to the slippage of the master plan schedule, Mr. Loehr said that the Council was warned about the major slippage last spring. Referring to page ©35, she expressed concern about the process that is being used to list the requests from Councilmembers to do limited master plan amendments. Referring to the list, Mr. Berlage said that several years ago, the Council directed Staff to do a limited master plan amendment for the National Park Seminary and the two remaining amendments listed on the page were requests from Councilmembers and are under consideration.

Vice President Silverman said that he and other Councilmembers are interested in the Woodmont Triangle issue and suggested that there should be a more formalized process for requesting limited master plan amendments. He said that if those tasks are taken on and other projects are pushed into the future, there should be a mechanism for the Council to consider the trade offs. Ms. Michaelson clarified that the procedure has been that the Planning Board would not proceed with work on a master plan amendment until there is a formal change to the work program. She said that the list indicates the Department is considering whether they will need to do a master plan amendment and if the decision is made to move forward, they will present the option to the Council for consideration. Councilmember Praisner said that she was concerned about the list because it was included in the Report which gives it a certain amount of formality and credibility.

With respect to Councilmember Floreen's question regarding whether there was a recent study of streamlining the master plan process, Ms. Michaelson said that approximately four year ago the Department initiated an effort to streamline the master plan process and approximately one year ago performed an evaluation which was not presented to the Council. At Ms. Floreen's request, Mr. Loehr said that the evaluation is moving through the process and would be presented to the Council.

Councilmember Floreen suggested that the Planning Board's role and contribution to the Capital Improvements Program (CIP) needs to be reinforced. She said that as the Council works through a new approach to Annual Growth Policy (AGP), it is incumbent on the Planning Board to advise the Council of the critical infrastructure needs that extends to roadways, intersections, and school facilities. Ms. Floreen suggested that the role of the Planning Board in the CIP process be part of its work program and that the AGP reflect the suggestion as a Council directive and commitment. She said that she believes the link between planning and infrastructure is one that should be maintained and prioritized.

With respect to Councilmember Floreen's question regarding the Beach Drive traffic safety review study that was mentioned in the Report and her request for a copy of the study, Mr. Berlage said that the study was related to speeding issues. Referring to the Housing-O-Meter chart, she requested and received information that the number of countywide moderately priced dwelling units will be available shortly.

Councilmember Praisner expressed appreciation to the Planning Board and Staff for their work. She said that she believes Ms. Michaelson has raised a good point in her memorandum regarding whether the format of the Bi-Annual Report is the best way to convey information regarding the Park and Planning Department's accomplishments and activities during the reporting period and whether the length and volume of material submitted is appropriate. With respect to the master plan process, she said that she is pleased Ms. Floreen requested a copy of the evaluation. Ms. Praisner expressed concern about the increasing lack of understanding regarding the master plan process and requested that the PHED Committee review the master plan process and discuss how to engage the community, the interaction of community and staff, and how variations in the plan are addressed. Councilmember Silverman agreed with Ms. Praisner's request. Councilmember Praisner referred to the problems associated with providing access to information on line and the complexities of technology. With respect to the timing of when the material is available on line to the public, she said that the Council is more vulnerable to that criticism but she has begun to hear complaints about the Planning Board. Referring to the US 29 interchanges, Ms. Praisner stated that the first three interchanges are proceeding quickly and are needed because they are access roads, but she is concerned about the value of the remaining interchanges. She noted that the master plan calls for an evaluation of each interchange to determine whether the others should be built. She questioned how the three interchanges will be evaluated to determine whether the Planning Board or the County will want to comment on them to the State Highway Administration and requested that Planning Staff review that issue.

Councilmember Praisner expressed concern about legal issues associated with identifying vacant lots and the expectations for development associated with the lots. She said that her concern extends to whether the development of a government document that has data on the special needs population and special needs housing is consistent with the fair housing law. With respect to private public partnerships using public land as exemplified by the Blair High School baseball issue, Ms. Praisner requested that Planning Staff review the requirements related to the development of the land to assure there are no conflicts.

Councilmember Silverman expressed appreciation to the Planning Board and Staff and, in particular, the Staff of the Parks Department that work in the field. He requested that the Staff be informed that the Council will continue to try to provide sufficient resources.

With respect to Councilmember Silverman's question related to the maintenance facility at Black Hill Regional Park, Planning Staff advised that it is 30 percent complete. With respect to the issue that was discussed this morning regarding the construction of a grade-separated interchange at the intersection of Veirs Mill and Randolph Road, Mr. Silverman requested that in the future, if there is a situation in which there would be a major direct impact on local businesses and homeowners, Staff develop procedures for providing notice. He spoke about the importance of creating a method for the businesses and homeowners adjacent to interchange modifications to have input. Councilmember Praisner expressed concern that this was amendment to an intersection and notice was only provided to the civic associations.

In response to Councilmember Silverman's comment regarding the progress being made at the Rickman farm and questions related to the timeline, Mr. Berlage said that a nonprivate provider will soon be selected to run the facility and at that time, a timeline can be provided. Mr. Silverman requested Ms. Rother, Planning Manager, Planning Implementation Section, Office of the County Executive, to draft a timeline schedule for transferring available

publicly owned land, and requested that the issue be addressed from a legal standpoint to determine whether changes are need in the process.

Councilmember Praisner stated that the Management and Fiscal Policy Committee discussed the issues related to the disposition of property and the role of the Council and she is concerned that the language in the Report indicates that the sites will be given to the Department of Housing and Community Affairs for disposition for affordable housing which is inconsistent with law and possibly it is not the end conclusion for every parcel of land.

Referring to the Housing-O-Meter, Councilmember Floreen requested and received information from Mr. Berlage that the publicly owned site study has been completed and potential sites have been identified. In response to Ms. Floreen's request that the Council receive a briefing before the sites are transferred, Mr. Silverman stated that in the fall, the PHED Committee will address the entire issue of affordable housing. Mr. Silverman expressed concern about the amount of time that is required to transfer a site and questioned whether there is a method of expediting the process while still providing the opportunity for public input. Referring to page ©24 of the packet, under special studies, he requested that the Council be provided information that was received on the nationwide search of jurisdictional practices and polices for the disposition of publicly owned surplus land to private developers with affordable housing. Mr. Silverman requested that a process be created for engaging the development community in the disposition of some of the sites.

With respect to the Woodmont Triangle Study, Councilmember Silverman requested and received information from Mr. Carter, Chief, Community-Based Planning Division, that the community meetings are scheduled to be held in October and November and the recommendations will be presented to the Council at the end of December.

Councilmember Silverman stated that the PHED Committee and the Council will be addressing the Moderately Priced Dwelling Unit program at the beginning of 2004.

The Council recessed at 4:19 P.M. and reconvened at 7:37 P.M.

SUBJECT: **Public Hearing on a Resolution to Approve the Lease of the Former Montgomery Hills Junior High School**

ACTION: The public hearing was conducted. Additional material for the Council's consideration should be submitted by the close of business October 7, 2003.

The meeting adjourned at 8:41 P.M.

This is an accurate account of the meeting:

Mary A. Edgar, CMC
Clerk of the Council